THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION Nos.19962 and 19963 of 2006

26th April 2007

W.P.No.19962 of 2006:

Between:

G.Narasimha Reddy and two others.

..Petitioners.

and

1. A.Sambasiva Rao, S/o Sri Venkata Subbaiah.
2. The Special Court under the A.P. Land Grabbing (Prohibition) Act, BRKR Bhavan, Tank Bund, Hyderabad.

.. Respondents.

W.P.No.19963 of 2006:

Between:

G. Narasimha Reddy and two others.

.. Petitioners.

And

V. Ramachandra Reddy and ten others.

.. Respondents.

COMMON ORDER: (Per the Hon'ble Mr Justice B.Prakash Rao)

Since both the Writ Petitions arise between the same parties though under different orders and involve virtually same questions, they are taken up together for disposal.

Heard Sri M.V.Durga Prasad, learned counsel appearing for the petitioners and Sri P.V.Sanjeeva Rao, and Sri Gummala Vijaya Kumar, learned counsel appearing for the contesting respondentss.

The petitioners herein, who are common in both the Writ Petitions, seek to assail the order 06.07.2006 dismissing the Review Application in I.A.No.397 of 2005 in L.G.C.No.76 of 1996 and also the order dated 11.07.2006 in L.G.C. (SR) No.357 of 2005 on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act at Hyderabad.

Briefly stated the facts, which give raise to these separate proceedings under two different orders, are that the petitioners herein claimed to be the member-allottees of a Society named M/s Gruhalakshmi Cooperative Housing Society Limited and each of them having been allotted 100 sq.yards in Sy.No.58 correlated to T.S.No.36/1, Block-J, Ward 156, Zamisthanpur Village, Musheerabad Mandal, Hyderabad, they have been in possession all along and they have paid the entire consideration apart from constructing a common compound wall and raised a shed and paying property tax to the

Municipality in respect of the said constructions which have been numbered as 1-9-278/58/A, 1-9-278/58/B and 1-9-278/58/C respectively. However, according to the petitioners, the contesting respondent herein filed an application under Section 8 of the A.P. Land Grabbing (Prohibition) Act (for brevity the "Act") in L.G.C.No.76/1996 claiming his right under a sale deed dated 21.05.1980 to the extent of 300 sq. yards in Sy.No.58, correlated to T.S.No.36/2, Ward No.156, Block-J, situated in Zamisthanpur. The said application was filed through his G.P.A. holder Sri T.V. Krishna. Though the contesting respondent did not appear or participate in the proceedings except through his G.P.A., and after regular enquiry, L.G.C.No.76/96 was allowed by the Special Court as per the orders dated 04.11.1997. Challenging the same, a Writ Petition being W.P.No.33572 of 1997 was filed and the same was dismissed by this Court as per the orders dated 03.07.2001 and against which an S.L.P. filed by the petitioners in the Supreme Court was also dismissed on 02.11.2001, however, observing that the petitioners can approach this Court by way of a Review. Therefore, the petitioners have filed a Review Application in W.P.M.P.No.28953 of 2002. Meanwhile, in pursuance of the orders passed in L.G.C.No.76 of 1996, an application in I.A.No.518 of 2002 was filed for execution of the said order and

delivery of possession of L.G.C. schedule property. Though the same was resisted by the petitioners herein on the ground of identity and difference in the boundaries, the same was returned by the Mandal Revenue Officer. Having regard to such disputed boundaries, however, the special Court allowed the same on 07.11.2002. Once again the writ petitions in W.P.Nos.22953 and 23105 of 2002 were filed against the said order and the same were dismissed on 17.12.2002 along with Review W.P.M.P.No.28953 of 2002 on 13.12.2002 filed by the second petitioner. Thus, the contesting respondents obtained possession thereof as per the orders dated 07.11.2002. According to the petitioners, there have been several acts of fraud on the part of the contesting respondents herein in getting the said orders by misleading and suppressing many real facts and material and therefore, the entire proceedings have to be vitiated. It has been stated that even though there has been a report of Mandal Surveyor, the same was not brought to the notice of the Court and even though the petitioners made an application for copy thereof, the same was not being given and therefore, the petitioners had to approach the Lokayuktha, who initially rejected the request of the petitioner on 04.09.2003, however on a challenge in a Writ Petition being W.P.No.23163 of 2003, this Court as per the orders dated 28.06.2004 directed Lokayuktha to dispose of the complaint where

after the said application was ultimately allowed on 29.03.2005 and the Mandal Revenue Officer was directed to issue certified copies. Thus, on the copies supplied, it is very much clear that the Mandal Surveyor report dated 22.04.2004 was suppressed by the respondents herein in the earlier proceedings which clearly shows that the seven plots i.e., 700 sq. yards were covered by the same compound wall within one house and common roof and the boundaries do not tally with the one which is claimed by the contesting respondents. Therefore, there was total misleading and relied on improper reports and proceedings. In the meanwhile, one Smt. Gajula Nancharamma filed L.G.C.No.28 of 2003 wherein an Advocate Commissioner was appointed to localise the land and who submitted a report on 05.10.2004 clearly stating that the L.G.C. property falls in T.S.No.36/1 which has been shown in T.S.No.36/2 by the Mandal Revenue Officer, as per the survey conducted by the Deputy Director of Survey and Settlements, Hyderabad on the basis of the survey records. Thus, there has been a total suppression in regard to the real situation including the reports and material as available. Therefore, the entire proceedings get vitiated. While disposing of the Review Application filed by the petitioners, this Court has observed that the said order shall not prevent the petitioner to avail the remedies, if any, available

to him in law. Therefore, on facts and pointing out the various other details, it is the case of the petitioners that there has been no proper enquiry and there has been clear suppression and therefore, the orders are totally vitiated by fraud and misrepresentation and collusion with the officials. Thus, in substance the case of the petitioners is that having regard to such fraud committed, the entire earlier proceedings though they have been confirmed all along are not correct and liable to be set aside. Thus, the petitioners, have filed the Review Application in I.A.No.397 of 2005 in L.G.C.No.76 of 1996 on the self-same grounds pointing out all facts, details and particulars as to how the fraud has been committed. Simultaneously the petitioners had also filed an independent application in L.G.C. (SR) No.357 of 2005 before the Special Court and the said application virtually runs on the self-same lines of the allegations of serious fraud and misrepresentation on the part of the contesting respondents. However, the Special Court took up both the matters separately and dismissed the aforesaid Review in I.A.No.397 of 2005 in L.G.C.No.76 of 1996 as per the orders dated 06.07.2006 whereas dismissed the L.G.C.(SR) No.357 of 2005 as per the orders dated 11.07.2006. In both these orders, the Special Court tried to place reliance on the earlier round of litigation to say that having regard to the fact that the said orders were confirmed all along, it is not open to the petitioners to assail the same once again. Dealing

separately in both the orders, the Special Court has gone into all those chequered events vis-à-vis the documents on record and stated that the petitioners cannot invoke either of the jurisdiction. Hence, these two Writ Petitions.

The learned counsel appearing for the petitioners sought to raise several questions even by going through the entire record to show as to how the fraud has been committed and especially in view of the varying reports and incorrect particulars forthcoming, the earlier proceedings could not be stated to be correct one and fraud has been played by the contesting respondents in obtaining the orders on the earlier round of litigation.

These submissions are sought to be repelled on behalf of the contesting respondents herein by stating that having regard to the chequered events and pendency of the proceedings all along which have gone up to the Supreme Court and the same were confirmed, it is not open to the petitioners herein to re-agitate the same by way of fresh application or review and the Special Court has rightly dismissed both the applications.

Having considered the submissions made on either side and on perusal of the material available on record, the only point that arises for consideration is as to whether on the facts and circumstances of the

case the petitioners are entitled to seek review or file any independent application under Section 8 of the Act on the ground of fraud ?

There is no serious dispute in regard to the earlier round of litigation between the parties which has gone up to the Supreme Court in the application filed by the respondents herein in L.G.C.No.76 of 1996 which has been allowed and ultimately stood confirmed on merits. No-doubt, very strenuous effort is being made on behalf of the petitioners by showing us each and every document and also the report which has been obtained subsequently due the intervention of the Lokayuktha which did not form part of the consideration in the earlier litigation. This report would amply show that there has been serious suppression of relevant material and thereby the contesting respondents have committed fraud. There is not much dispute on behalf of the contesting respondents herein in regard to the documents especially the reports referred to by the petitioners, however, the same are not being properly represented in these proceedings. On the face of it, in either of these proceedings, there was no enquiry nor any evidence was produced from both the sides on merits. On the face of the record, which is available the Review Application as well as the independent application in L.G.C. (SR) No.357 of 2005 were dismissed mainly on the ground of the earlier litigation having become

final. Therefore, now it has to be seen as to how far these orders are sustainable in law or on facts. Primarily it has born in mind that in both these proceedings, the case of the petitioners rests on the allegations of fraud and misrepresentation referring to various documents including the reports, which did not form part of the earlier enquiry. In spite of the fact that a case has been disposed of on merits and has become final, however when the allegation of fraud is forthcoming, necessarily it calls for an enquiry and it has to be answered in a more proper perspective rather than throwing out the case virtually runs like estoppel and on the principles of *Res judicata*. Though it has been stated that the earlier litigation would constitute Res judicata, however the entire proceedings would proceed on the ground that having regard to such round of litigation on the earlier occasion and the same having become final, the petitioners cannot again knock the door of the Special Court. Therefore, *prima facie,* we are of the view that in these cases, there was absolutely no enquiry into the allegation of fraud as made out by the petitioners in the Review Application or even in the independent application filed in L.G.C. (SR) No.357 of 2005. The question is not as to whether those grounds are sustainable or not. Without holding any enquiry into such allegations, it cannot be said that there is no fraud nor there is no basis for committing fraud. That apart, it is not the case of the petitioners herein, who approached the

Special Court under these two proceedings in two different applications with a mere sweeping or bald allegation of fraud, he did refers to and points out the various documents including the. report of the Mandal Revenue Officer, which has been obtained through Lokayuktha which does not form part of the consideration in the earlier enquiry. Therefore, it is not the case where it can be stated that *prima facie* there is no case at all or to throw out both the applications at the threshold. Therefore, primarily, we are of the view that there has been no enquiry into the allegation of fraud as set up or contended or alleged by the petitioners. In these two applications, both the orders get vitiated and necessarily the matters require to be gone into on merits especially on the grounds urged in support of these applications.

Further another curious aspect, which the special Court has missed, is that virtually both these proceedings arise between the same parties in respect of the same subject matter on the claims as set forth by both of them. Having regard to the same, the special Court out to have taken up the review application as well as the freshly filed L.G.C(SR) together by clubbing the same and disposed of simultaneously rather than taking up both the applications independently and disposing of by separate orders. Such an

approach is totally unsustainable especially in view of the fact that the parties are same and the subject matter is same and the questions involved also being same. Therefore, even on this count also the matters require to reconsidered afresh by the Special Court by taking up these two applications together with due notice and opportunity to both the sides.

It is now well established that in regard to any attack being made in respect of the proceedings on the ground of fraud, it is stated that fraud vitiates everything and in fact makes the entire proceedings void *ab initio* irrespective of the fact that any such orders are carried in appeal and confirmed. Even such confirmed orders can be attacked, if the party, who makes out the case of fraud and establish the same. No-doubt, a serious question of both on law and on fact and the party who approaches on such ground of fraud takes upon him the heavy burden to show as to how the fraud has been committed by the other side. Without much doubt, it could not be reiterated that such application could not be allowed. But, however the incidence of such attack would only lead to hold an enquiry into such allegations and going into the same and have a say on merits rather than rejecting such contentions on the mere basis of affidavits or oral submissions. In these two cases, there being no such enquiry nor any evidence allowed to produce, we of the view that the matters, in fact, require an

enquiry into the serious allegations of fraud and misrepresentation.

Thus, we are conscious of the fact that no-doubt this attempt could be mean to say that the petitioners may be trying to protract the proceedings, however, that itself cannot be a ground to reject the applications at the threshold itself. Therefore, we refrain from going into the merits in depth or in detail on the claims as set forth by both the sides and we leave it open to the Special Court to go into all such questions on merits in accordance with law.

Both the Writ Petitions are allowed and the orders dated 06.07.2006 and 11.07.2006 in I.A.No.397 of 2005 in L.G.C.No.76 of 1996 and L.G.C. (SR) No.357 of 2005 respectively on the file of the Special Court under the Land Grabbing (Prohibition) Act at Hyderabad are set aside. The Special Court at Hyderabad is directed to take up both the proceedings together by holding a common enquiry after giving notice and opportunity to both the sides. It is needless to mention that the parties are entitled to lead any fresh evidence, if they choose to do so. No costs.

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B. PRAKASH RAO, J

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M. VENKATESWARA REDDY, J

26th April 2007.
Chvn.